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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/716,090      | 11/18/2003  | Edwin R. Hodsdon     |                     | 4861             |

7590 11/01/2004

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| EXAMINER |
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CHAPMAN, JEANETTE E

|          |              |
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| ART UNIT | PAPER NUMBER |
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3635

DATE MAILED: 11/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/716,090

Applicant(s)

HODSDON ET AL.

Examiner

Chapman E Jeanette

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 1-9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-9, drawn to a method of bracing a wall, classified in class 52, subclass 741.1.
- II. Claims 10-20, drawn to an apparatus for bracing a wall, classified in class 52, subclass 127.2.

The inventions are distinct, each from the other because of the following reasons:

Inventions Group I and Group II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case, the process could employ an apparatus having additional features over those recited in Group II apparatus claims. Moreover, the Apparatus could be used by a different method other than by hand.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with Mr. Dan Jones on 10/27/04 a provisional election was made without traverse to prosecute the invention of Group II, claims 10-20. Affirmation of this election must be made by applicant in replying to this Office action.

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Claims 1-9 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 10, 12-13, 18-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Camardo (4068427). Camardo discloses a bracing wall 22/23 being fabricated from masonry blocks above a wall foundation with said wall or foundation having at least one connector opening, adjacent element 50, through the block wall being fabricated, said apparatus comprising:

- Brace supporting structure having stiff vertical, horizontal and diagonal members, 32, 35, 33 respectively, with said vertical 32 member connected at a right angle to the horizontal member 35 and placed adjacent one surface of the masonry wall 22/23;

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- Connector means 30/50 affixed at right angle of said brace structure with said connector means having a length sufficient to extend through said opening; see figure 9;
- Means associated with the connector for connecting the right angle section of the brace to a supporting surface on the opposite side of the connector opening in said wall; see figure 9;
- Manually operable means for tightening the connector and leveling the horizontal member until the vertical brace member is flush against the wall; one is capable of operating the apparatus by placing the pin through the openings and adjusting the telescopic parts to the desired lengths; any mechanical device is manually operable as the user so desires;
- The supporting surface on the other side of the wall is a second right angle support set identical to the first set; see figure 9
- The first and second sets are in back to back positions on opposite side of the wall; see figure 9;
- Each set initially rest on the ground and is capable of manual rotation or pivotable rotation around the connecting means; see figure 9 and column 3; a user is capable of holding or grasping the vertical members in an upright positions against the wall free from any further manual support;

***Claim Rejections - 35 USC § 103***

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11, 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Camardo in view of Kelly (4000592). Camardo discloses the connecting means but not one of the adjustable nature. Kelly discloses a wall supporting structure comprising

- Means for adjustable anchoring the connecting means 66/68/70; the same are nuts and threaded bolts with adjustable threads on 66 to enable adjustable anchoring of the connecting means against a supporting surface located on the other wall side;
- Means 18 for temporarily tying both sets to the wall; this means may be done before or after the tie of Kelly is embedded in the wall;

One of ordinary skill in the art would have appreciated adjustably anchoring the device to the wall as shown by Kelly in order to accommodate various sizes in wall thicknesses.

The tie of Kelly does not wrap around the wall. However, one of ordinary skill in the art would have appreciated any further means of anchoring the tie to the wall and the brace within the scope of his invention. Tying the tie 18 around the brace and wall is very much within the scope of the apparatus of Kelly in order to further and securely anchor the brace to the wall

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Claims 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Camardo in view of Kelly as applied to claim 15 and further in view of Snyder (6256939). Camardo and Kelly disclose various ground mounting structures at the outermost end of the horizontal member for manually leveling the horizontal member but lacks the screw jack type as shown by Snyder. Snyder discloses a screw jack 5 resting on a plate 3 sitting on the ground 2. It would have been obvious to one of ordinary skill in the art to modify Camardo by employing the screw jack 5 of Snyder in order to more provide amore readily adjustable footing system.

Claims 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Camardo in view of Bolinger et al (6550188). Camardo lacks the commonly and well known structural members of mounting plates and caps. Bolinger et al discloses mounting plates 60 and 71 at the upper end of his vertical member and a top covering cap covering the opening end of a vertical support member. These anchoring and finishing means are commonly and well known and one of ordinary skill in the art would have incorporated them on the brace apparatus of Camardo in order to further anchor the structure and to cover sharp edges and provide a finished appearance to the structure as shown by Bolinger et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chapman E Jeanette whose telephone number is 703-308-1310. The examiner can normally be reached on Mon.-thursday, 8:30-7:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Friedman Carl can be reached on 703-308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jec

  
Jeanette Chapman  
Primary Examiner